

## PUBLIC UTILITIES COMMISSION

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August 15, 1996

VIA FEDERAL EXPRESS

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20036

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**Re: CC Docket No. 95-116**

Dear Mr. Caton:

Please find enclosed for filing an original plus sixteen copies of the COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING in the above-referenced docket.

Also enclosed is an additional copy of this document. Please file-stamp this copy and return it to me in the enclosed, self-addressed postage pre-paid envelope.

Yours truly,

Mary Mack Adu  
Attorney for California

MMA:nas

Enclosures

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**ORIGINAL**

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of  
Telephone Number Portability

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)  
) CC Docket No. 95-116  
) RM 8535  
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COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA  
AND THE PUBLIC UTILITIES COMMISSION OF THE STATE  
OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING

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**COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA  
AND THE PUBLIC UTILITIES COMMISSION OF THE STATE  
OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING**

**I. INTRODUCTION AND SUMMARY**

The People of the State of California and the Public Utilities Commission of the State of California (California or CPUC) respectfully submit these comments to the Federal Communications Commission (FCC or Commission) on the Notice of Proposed Rulemaking (NPRM) regarding cost allocation rules for implementing long-term local number portability (LNP).

By these comments, California indicates its agreement with the FCC that there are three types of long-term number portability costs.<sup>1</sup> We further agree that the principle of competitive neutrality applies to the allocation of costs among carriers, but not necessarily to the recovery of those costs from end users. The CPUC further states its position that the

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1. The CPUC has not taken up the issue of cost recovery of long-term number portability in its proceedings. These comments are a vehicle for addressing the FCC's proposals.

definition of "telecommunications carriers" depends on the category of costs when allocating number portability costs.

The CPUC believes that shared costs should be allocated among all carriers in the region or state. Non-recurring and annual recurring shared costs should be allocated based on the number of active lines. Carriers contributing to or deriving information from a database should bear upload and download costs.

The FCC asks whether it should prescribe the cost recovery mechanism for incumbent local exchange carriers (LECS) to recover their shared LNP costs from end users or other carriers. California's view is that the states should be allowed to decide the issue of cost recovery from end use customers of incumbent LECs and other carriers, particularly if state databases are used. California does not support allowing one group of carriers to pass on any portion of its shared costs through to other carriers because this would violate competitive neutrality principles. Moreover, the CPUC believes that both national and state efforts will be required to ensure that shared costs associated with number portability databases are recovered in a competitively neutral manner.

California proposes a different method for the recovery of direct carrier specific costs than those set forth in the NPRM, ¶221. Rather than having all carriers bear their own costs entirely, or pooling all carriers' costs, California suggests a method whereby carriers could bear a portion of their own costs and pool the remaining portion. This method would provide an

incentive to minimize total costs while simultaneously facilitating competitive neutrality through pooling. California believes that carriers should be allowed to pass their specific number portability costs to end users, and not to other carriers. Recovery from other carriers would allow one group of carriers to load number portability costs onto other carriers, and would thus defeat competitive neutrality. In addition, California believes that carriers should be allowed flexibility to recover their portion of carrier-specific costs from customers as they choose.

With respect to indirect carrier-specific costs, the CPUC agrees with the FCC that such costs as those for AIN and SS7 network upgrades should be borne by individual carriers because these costs are associated with the provision of a wide variety of services, and are not solely related to the provision of number portability. Finally, California agrees with the FCC's tentative conclusion that carrier-specific number portability costs for carriers subject to price cap treatment should be treated as exogenous costs, only to the extent that it applies to carriers subject to the federal price cap. Treating such costs as exogenous costs under California's price cap scheme would mean that these costs are recoverable immediately through a z-factor adjustment. California will soon be considering pricing flexibility proposals for its incumbent LECs subject to a price cap, and believes that the CPUC is best suited to determine the manner in which carriers should recover their specific number portability costs.

**II. THE 1996 ACT MANDATES COMPLIANCE WITH  
COMPETITIVE NEUTRALITY PRINCIPLES IN NUMBER  
PORTABILITY COST RECOVERY.**

**A. California Agrees with the FCC's Cost  
Categories and Competitive Neutrality  
Principles.**

The NPRM tentatively concludes that long-term number portability costs fall into three categories: 1) costs incurred by the industry as a whole, 2) direct carrier specific costs, and 3) indirect carrier-specific costs. (NPRM, ¶208.) California agrees with this tentative conclusion and also agrees that the first two categories of costs must be borne by all telecommunications carriers, as defined below, on a competitively neutral basis. As the FCC states, this competitive neutrality principle applies to the allocation of costs among carriers but not necessarily to the recovery of these costs from end-use customers. (NPRM, ¶209.) The FCC further concludes that the third type of costs, indirect carrier costs not directly related to LNP such as costs for SS7 and AIN network upgrades, should be borne by individual carriers. (Id.) California agrees with this conclusion as well, and adds that carriers should bear and recover these costs in the same manner as network upgrades are handled today. We do not believe it is necessary for the FCC to specify a particular recovery mechanism for network upgrade costs in this NPRM.

The FCC's accompanying order on number portability includes principles for competitive neutrality applied to cost recovery for interim number portability costs. (NPRM, ¶¶132, 135.) California agrees with the FCC's criteria for competitive

neutrality and its tentative conclusion that these criteria should also apply to costs for long-term portability.

**B. The Definition of "All Telecommunications Carriers" Depends on the Category of Costs.**

The NPRM asks how the FCC should interpret the reference to "all telecommunications carriers" when allocating number portability costs. (NPRM, para. 209.) The CPUC suggests that the allocation of costs depends on the type of costs. First, for shared costs such as a database to support number portability, "all telecommunications carriers" should include all carriers operating in a given region, or state, because the database is a network function that all carriers must access in order to terminate calls, and therefore, should support. "All telecommunications carriers" would include any carrier of record on an end user's bill.<sup>2</sup> California does not take a position on whether resellers should be included in this group because it is unclear to us how they may interface with the database.

Second, California proposes that only those carriers which port numbers to and from other carriers should bear a portion of carrier-specific costs that are pooled and reallocated to telecommunications carriers. Thus, resellers and small or rural LECs exempted from portability requirements would not be allocated a portion of these costs, but commercial mobile radio

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2. This group of carriers would include, but not be limited to, incumbent local exchange carriers, competitive local carriers, CMRS providers, and interexchange carriers.

service (CMRS) providers would bear a portion because the FCC requires them to offer portability.

### III. SHARED COSTS

#### A. Shared Costs Should Be Allocated Among All Carriers in the Region or State.

The FCC asks whether shared industry costs, such as costs to establish and maintain regional number portability databases, should be recovered through a charge levied against only carriers using the database, or against all carriers whether they use the database or not. If costs are recovered from all carriers, the FCC asks whether this should be done on a nationwide or regional basis. (NPRM, ¶212.)

As discussed above, the CPUC supports allocating shared costs among all carriers in a given region or state because all carriers may, at some point, need to use the database to terminate calls. A carrier's use of the database and the benefit that carrier derives from the database is independent of the quantity of telephone numbers, if any, that the carrier has ported to or from another carrier. All carriers, including those in areas where porting is not offered, should contribute to the database because all carriers may need access to the database information to terminate calls to ported numbers. The CPUC does not believe these shared costs should be allocated on a national basis because each region of the country, as well as states developing their own databases, may incur costs unique to that region or state. Carriers which terminate calls in California should only share in costs for a California database, and not



databases created exclusively for terminating calls in other regions or states.

**B. Non-recurring and Annual Recurring Shared Costs Should Be Allocated Based on the Number of Active Lines.**

The FCC describes three types of shared costs:

- 1) nonrecurring costs to develop and implement a database,
- 2) recurring costs to maintain and operate a database, and
- 3) costs to upload, download and query the database. (NPRM,

¶216.) For all three categories of shared costs, the FCC proposes an allocation based on gross telecommunications revenues, minus charges paid to other carriers. (NPRM, ¶213.)

The CPUC proposes an alternative allocation, based on a carrier's active end-user assigned numbers, for the first and second category of shared costs. We believe this method is most appropriate to meet the test of competitive neutrality because carriers would pay for the shared portion of this network function based solely on the numbers they serve.<sup>3</sup> Further, California is concerned that an allocation based on revenues could penalize carriers with high revenues and few lines that do not necessarily use the database more frequently than other carriers.

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3. California distinguishes the active assigned end-user numbers from the number of active lines. A PBX system may have only one active line, but serve many end-user numbers. Therefore, the allocation should be by numbers, not by active lines.

An allocation based on active end-user numbers may best correlate to a carrier's potential use of the database to terminate calls. We note that the FCC endorsed an allocation based on active numbers earlier in its order regarding recovery of interim number portability costs (Order/NPRM, p. 71, ¶136).

**C. Upload and Download Costs Should Be Allocated  
To Carriers Contributing to or Deriving  
Information From the Database.**

As California understands the number portability models proposed thus far, carriers which port numbers to or from another carrier would upload information on these numbers to the regional or statewide database on a regular basis (perhaps daily). Once aggregated and verified, carriers completing calls would download this information from the regional or state database on a regular basis to update their own database. The NPRM also suggests that the database may handle actual queries to route calls, although this is not our current understanding in California. (NPRM, ¶216.)

In our view, the state or regional database administrator should directly charge carriers who contribute to or derive information from the database for the costs of uploading and downloading information. Each time a carrier completes a call to a ported number, that carrier would query its own database containing the information downloaded from the state or regional database. Costs for carriers to query their own databases would not be included in this category of shared costs, since these are carrier-specific costs. In the event the state or regional

database also handles per call queries as the FCC suggests, then carriers performing the query, if known, should pay any per-query costs. If the cost causer is not known, per-query costs should be rolled into monthly recurring costs as the FCC suggests.

(NPRM, ¶219.)

**D. States Should Determine Recovery of Shared Costs, Particularly for State Databases.**

The FCC asks whether it should prescribe the cost recovery mechanism for incumbent LECs to recover their shared LNP costs from either end users or other carriers. (NPRM, ¶215.) In California's view, the FCC should not select such recovery mechanisms, either for incumbent LECs or for other carriers. Rather, the FCC should allow the states to decide the issue of cost recovery from end-use customers of incumbent LECs and other carriers. In general, California supports allowing carriers to determine the extent to which they will bear these costs or pass them through to their end-use customers. California does not endorse allowing one group of carriers, i.e. incumbents, to pass any portion of its shared costs through to other carriers because this would violate competitive neutrality principles.

In its discussion of shared cost recovery, the FCC notes that states may opt out of regional databases established by the North American Numbering Council (NANC). (NPRM, ¶211.) The CPUC recognizes that principles for shared cost allocation and recovery described in these comments should apply to both regional and statewide databases. Still, if a state opts out of the NANC region and sets up its own database, that state should

retain jurisdiction over the actual amount of costs allocated to carriers and ultimately recovered from end-use customers. States should have the discretion to examine their own database costs and determine what portion is reasonable for allocation to carriers operating in that state.

For example, the CPUC recently ordered its Local Number Portability Task Force to issue a request for proposal (RFP) and, by December 31, 1996, to select a vendor to provide number portability database services to carriers in the state.<sup>4</sup> While California has not yet decided whether it will opt out of any regional database later established by NANC, California's geographic size and density in relation to neighboring states may make a statewide-only database a natural choice. Similar to efforts in other states, carriers participating in the California Number Portability Task Force may decide to establish an independent third party, such as a limited liability corporation (LLC), to issue the RFP and select the database vendor. Carriers have commented to the CPUC that the extent of its jurisdiction over an LLC is in question because the LLC may not be a public utility. Notwithstanding these concerns, California believes it retains authority to determine what portion of database costs should be allocated to California carriers. If a state opts to establish its own database, it should exercise its jurisdictional

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4. The Task Force is comprised of incumbent LECs, competitive local carriers (CLCs), interexchange carriers (IXCs), CMRS providers, and consumer advocates.

right to oversee the competitively neutral allocation and recovery of reasonable state database costs as appropriate.

**E. All Carriers Must Receive Nondiscriminatory Access to the Database.**

In the NPRM, the FCC asks how it can ensure the competitively neutral recovery of identified shared costs. Specifically, should the FCC establish a mechanism for the database administrator to recover its costs, and should the FCC require the database administrator to submit tariffs or reports to the FCC to ensure compliance? (NPRM, ¶220.) In California's view, efforts will be required at both the state and national levels to ensure that shared costs associated with the number portability databases are recovered in a competitively neutral manner. Given that carriers in some states may move ahead to establish LLCs and select vendors to set up statewide databases, the FCC should ensure that nationally, all carriers which require access to the services of the various databases receive that access under nondiscriminatory rates, terms, and conditions. Carriers should not be able to arrange preferential access or pricing for database services because of their membership in the LLC selecting a database vendor.

**IV. DIRECT CARRIER-SPECIFIC COSTS**

**A. Direct Carrier Costs Should Be Partially Pooled and Partially Borne by Individual Carriers.**

The FCC offers two potential methods to allocate carrier-specific number portability costs, notably costs for switch

software to port numbers. First, carriers could bear their own costs to deploy number portability on their own networks. Or, second, carriers in a given region could pool their costs, which would then be reallocated across all carriers based on a competitively neutral allocation mechanism. (NPRM, ¶221.)

California notes that it is difficult to endorse either of these methods without knowing the relative costs that incumbent carriers will bear to provide number portability on their networks, compared to the costs new entrants will incur. Incumbents may argue that the costs to outfit their networks to comply with the mandate of number portability are higher than new entrants' costs, which have the benefit of designing their network anew to provide number portability most efficiently. While pooling all carriers' costs may appear more competitively neutral to alleviate incumbents' concerns, that arrangement will diminish a carrier's incentive to minimize its costs if it knows that others will bear a portion of them.

Because of the need to balance competitive neutrality with an incentive to minimize costs, California suggests a third method to allocate carrier-specific costs. Carriers could bear a portion, perhaps 50%, of their own costs and pool the remaining portion. Under this method, carriers would have an incentive to minimize total costs and competitive neutrality would be achieved through pooling. This method is preferable to all carriers bearing their own costs entirely, because it would prevent residential customers of incumbents LECs from bearing a disproportionate share of number portability costs. Partial

pooling is also preferable to total pooling of costs because total pooling gives carriers less incentive to minimize costs. The allocation of any pooled costs back to carriers should be based on gross telecommunications revenues less payments to other carriers.

In addition, California suggests that this partial pooling method is particularly useful for carrier-specific start up, or one-time costs, such as those incurred to install switch software. In such instances, the difference between incumbent and new entrant costs may be the greatest. The FCC may want to consider separately the advantages and disadvantages of carriers bearing their specific ongoing costs to maintain number portability into the future.

**B. Carrier-specific Costs Should Be Passed Only to End Users and Not to Other Carriers.**

The FCC asks whether it has the jurisdictional authority to mandate a mechanism for incumbent LECs or other carriers to recover their carrier-specific costs from end users or from other carriers. (NPRM, ¶222.) California reiterates its position that the FCC should not select recovery mechanisms either for incumbent LECs or for other carriers. Carriers should be allowed only to pass their specific number portability costs to end users and not to other carriers. Allowing incumbent carriers to pass costs to other carriers would defeat efforts to ensure competitive neutrality among all carriers. Cost recovery is not competitively neutral if one group of carriers can pass its costs on to other carriers. Also, if a carrier operates solely

within the State of California, the CPUC should determine any recovery of that carrier's direct number portability costs from its end users.

**C. Carriers Should Be Allowed Flexibility to Recover Their Portion of Carrier-Specific Costs.**

The FCC suggests two options for recovery of carrier specific LNP costs from consumers, either: 1) allow carriers the flexibility to recover their direct number portability costs from customers as they choose, or 2) require carriers to recover costs through a specific LNP charge assessed on customers in areas where LNP is offered. (NPRM, ¶223.) Similar to our position on shared industry costs, California prefers the first option of allowing carriers flexibility in recovering their portion of carrier specific costs. California does not support a regionally or nationally assessed end-user charge to recover carrier specific costs for number portability. In our view, allowing carriers flexibility to recover their share of direct number portability costs meets the test of competitive neutrality, is administratively simpler than an end-user charge, and avoids overloading customer bills with numerous line item charges.

Finally, the FCC asks whether carriers should be permitted to recover their carrier-specific costs from other carriers through increases in charges for regulated services. (NPRM, ¶225.) California opposes this idea because recovery from other carriers through charges on regulated services violates



principles of competitive neutrality by allowing one group of carriers to load number portability costs onto other carriers.

**V. INDIRECT CARRIER-SPECIFIC COSTS - Carriers  
Should Bear Network Upgrade Costs Not Directly  
Related to Number Portability.**

In the NPRM, the FCC tentatively concludes that indirect carrier-specific costs, such as costs for AIN and SS7 network upgrades, should be borne by individual carriers as network upgrades and are not subject to the competitive neutrality requirements of section 251 of the Telecommunications Act of 1996. (NPRM, ¶226.) California agrees with this tentative conclusion because we agree that network upgrade costs are associated with the provision of a wide variety of services and are not solely related to the provision of number portability.

The FCC asks whether it should specify a recovery mechanism for these costs. (NPRM, ¶229.) California proposes that any costs not directly related to number portability should be allocated and recovered under the same principles used today for this type of network upgrade cost. Where these costs are state-specific or where states have traditionally handled the allocation and recovery of these costs, states should retain this jurisdiction.

**VI. PRICE CAP CARRIERS - States Should Be Allowed  
Determine How Price Cap Carriers May Recover  
Exogenous Costs.**

The FCC tentatively concludes that carriers subject to price cap treatment should be allowed to treat carrier-specific number

portability costs they incur as exogenous costs. (NPRM, ¶230.) California agrees with this tentative conclusion insofar as it pertains to carriers subject to the federal price cap. California is concerned, however, that the FCC's determination will prejudice how states with incumbent LECs subject to price cap regulation can determine the method of cost recovery. If the costs are deemed exogenous, under California's price cap scheme, those costs today would be recoverable through a Z-factor adjustment. But, California will soon be considering pricing flexibility proposals for its incumbent LECs subject to a price cap. Given this open issue, California is best situated to determine the manner in which carriers should recover their specific number portability costs.

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## VII. CONCLUSION

The CPUC asserts that the comments contained herein will foster competitive neutrality in long term number portability, as required by Section 251(e)(2) of the 1996 Act. Accordingly, we submit them in the spirit of federal/state cooperation that is necessary to develop rules that will encompass a larger national framework, while simultaneously utilizes state expertise and knowledge to ensure fair competition in the state or region.

Respectfully submitted,

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August 15, 1996

CERTIFICATE OF SERVICE

I, Mary Mack Adu, hereby certify that on this 15th day of August 1996, a true and correct copy of the forgoing "COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING" as mailed first class, postage prepaid to all known parties of record.

Mary Mack Adu  
Mary Mack Adu